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5  
6 UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE  
8

9 Javier Martinez,  
Petitioner

10 vs.

11 Bruce Scott, et al.,  
12 Respondents

W.D. Wash. No. 25-1538  
Agency No. 

REQUEST FOR HEARING AND  
MOTION FOR TEMPORARY  
RESTRAINING ORDER<sup>1</sup>

NOTE FOR:  
August 13, 2025

13  
14  
15 The Petitioner, Javier Martinez, has been held in immigration detention without bond by  
16 U.S. Immigration and Citizenship Enforcement (ICE) for over seven years, since April 26, 2018.  
17

18 <sup>1</sup> On August 13, 2025, undersigned counsel notified Michelle Lambert of the U.S. Attorney's  
19 Office, counsel for Respondents in *Martinez v. Alfonso-Royals*, 2025 U.S. Dist. LEXIS  
128436, 2025 WL 1866085 (W.D. Wash. July 7, 2025), of this Motion, and also Stephanie  
Huerta-Ramirez of the U.S. Attorney's Office.

20 REQUEST FOR HEARING AND  
MOTION FOR TEMPORARY RESTRAINING ORDER - 1

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1 On July 7, 2025, this Court found that Mr. Martinez' prolonged detention violates due process;  
2 the Court ordered that the Respondents must provide a bond hearing at which they have the  
3 burden of proving, by clear and convincing evidence, that Mr. Martinez continues to pose is a  
4 flight risk or danger to the community. *Martinez v. Alfonso-Royals*, 2025 U.S. Dist. LEXIS  
5 128436, 2025 WL 1866085 (W.D. Wash. July 7, 2025). The Respondents have not complied  
6 with this Court's order. A bond hearing was held on August 4, 2025, but the Respondents failed  
7 to provide evidence concerning Mr. Martinez' current flight risk or danger to the community,  
8 and provided a hearing that was grossly unfair and constitutes a violation of due process.

9 Mr. Martinez requests this Court to schedule a prompt hearing pursuant to 28 U.S.C.  
10 §2243 at which he has an opportunity to establish that his continued detention violates Due  
11 Process. In the alternative, if this Court determines not to schedule a prompt hearing pursuant to  
12 §2243, Mr. Martinez requests that this Court issue a temporary restraining order allowing him to  
13 remain free from custody while the habeas proceeding is pending. That is similar to what this  
14 Court ordered in 2013 when it allowed Mr. Martinez to be free on personal recognizance while  
15 the underlying criminal proceedings were pending.

### 16 **FACTUAL BACKGROUND**<sup>2</sup>

17 The Government bases its refusal to release Mr. Martinez from custody on two prior  
18 convictions. On October 21, 1999, when he was 19 years old, Mr. Martinez was arrested for

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19 <sup>2</sup> The description of the factual background is based on the attached Exhibits.

1 conspiracy to deliver cocaine. He was convicted and sentenced to serve 20 months in jail. After  
2 he was released, the Immigration and Naturalization Service (INS) commenced removal  
3 proceedings. Mr. Martinez was ordered removed by the immigration judge and on September  
4 11, 2002 he was granted withholding of removal pursuant to 8 U.S.C. §1231(b)(3).

5 Mr. Martinez was arrested a second time on February 7, 2013 and charged with  
6 conspiracy to deliver cocaine. On February 12, 2013 Magistrate Judge Theiler determined that  
7 Mr. Martinez was not a danger to the community or a flight risk, and issued an order allowing  
8 him to be released on personal recognizance pending trial. *U.S. v. Martinez*, Magistrate Case  
9 No. MJ13-69, CR 13-50 RSL (W.D. Wash.), Docket No. 63. *See* 18 U.S.C. §3142 (defendant  
10 cannot be released pending trial if he is a flight risk or will endanger the safety of the  
11 community). On October 10, 2013, Mr. Martinez was sentenced to serve 60 months in prison.  
12 At that time, Judge Lasnik determined that Mr. Martinez was not a danger to the community and  
13 not a flight risk and allowed him to remain free on personal recognizance until it was time for  
14 him to begin his criminal sentence. *U.S. v. Martinez*, Case No. 13-0050-RSL (W.D. Wash.),  
15 Docket No. 272. *See* 18 U.S.C. §3143 (defendant can be allowed to remain at liberty after  
16 sentencing only if there is clear and convincing evidence that he is not likely to flee and does not  
17 pose a danger to the community).

18 During the time from February 12, 2013, when he was released on personal recognizance,  
19 until November 11, 2013, when he self-reported to begin serving his sentence, Mr. Martinez  
20 successfully complied with all requirements of his release, he enrolled in a mental health

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1 treatment program, and he did everything he possibly could do to prove that he is responsible,  
2 not a flight risk and not a danger to the community.

3 On or about April 26, 2018, Mr. Martinez completed his sentence and he was turned over  
4 to the Immigration and Customs Enforcement (ICE). ICE took custody of Mr. Martinez and he  
5 has been in the custody of ICE ever since. Mr. Martinez is currently being held at the Northwest  
6 Detention Center in Tacoma, Washington.

7 In removal proceedings, Mr. Martinez applied for protection under the Convention  
8 Against Torture. This relief was denied by the Immigration Judge (IJ), and on March 13, 2019,  
9 the immigration judge ordered removal to Nicaragua or in the alternative to Costa Rica; this  
10 decision was affirmed by the Board of Immigration Appeals (BIA) on August 27, 2019. The  
11 removal case against Mr. Martinez has been pending ever since.<sup>3</sup> Most recently, after the case  
12 was remanded from the BIA, on November 15, 2024 the immigration judge denied all relief and  
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14  
15 <sup>3</sup> Mr. Martinez filed an appeal to the Ninth Circuit Court of Appeals on September 24, 2019.  
16 After Mr. Martinez filed his Opening Brief, the Government requested that the case be  
17 remanded to the Board of Immigration Appeals for a new decision, and on October 2, 2020, the  
18 Ninth Circuit remanded the case to the BIA. On remand, on March 1, 2021, the BIA again  
19 ordered removal. Mr. Martinez again appealed to the Ninth Circuit, and on August 5, 2022, the  
20 Ninth Circuit reversed the Board's decision. *Martinez v. Garland*, 2022 U.S. App. LEXIS  
21 22267, 2022 WL 3137612 (9th Cir. 2022). On May 22, 2023, the BIA remanded the case to  
22 the immigration judge for a new decision. On August 15, 2023, the immigration judge ordered  
removal. Mr. Martinez appealed to the BIA, and on April 18, 2024, the BIA reversed the  
immigration judge's decision and remanded for further proceedings. On November 15, 2024,  
the immigration judge re-issued an order of removal. Mr. Martinez has appealed to the BIA.

1 ordered removal to Nicaragua or in the alternative to Costa Rica. Mr. Martinez has appealed to  
2 the Board of Immigration Appeals, where the case remains pending.

3 The detention of Mr. Martinez has also been the subject of lengthy litigation.<sup>4</sup> Most  
4 recently, on November 27, 2024, Mr. Martinez filed a petition for habeas corpus arguing that his  
5 prolonged immigration detention violates due process. *Martinez v. Jaddou*, Case No. 24-1960  
6 (W.D. Wash.). On June 5, 2025 the Magistrate Judge issued a Report and Recommendation  
7 finding that Mr. Martinez' continued detention violates due process unless the Government can  
8 prove by clear and convincing evidence that he continues to be a danger to the community or a  
9 flight risk. *Martinez v. Jaddou*, 2025 U.S. Dist. LEXIS 129632, 2025 WL 1870828 (W.D.

10 \_\_\_\_\_  
11 <sup>4</sup> On November 13, 2019, Judge Richard Jones found that the continued mandatory detention of  
12 Mr. Martinez violates due process unless DHS establishes by clear and convincing evidence that  
13 Mr. Martinez is a danger to the community or a flight risk. *Martinez v. Clark*, 2019 U.S. Dist.  
14 LEXIS 196836, 2019 WL 5962685 (W.D. Wash. 2019). On November 26, 2019, a bond hearing  
15 was held. The IJ found Mr. Martinez to be a danger to the community and a flight risk based on  
16 the recency of the conviction. Mr. Martinez appealed the IJ's decision to the BIA; on May 14,  
17 2020, the BIA affirmed the IJ's decision. Mr. Martinez then filed a habeas petition arguing that  
18 the Board's decision was unsupported by the record. On December 14, 2020, Judge Thomas  
19 Zilly affirmed the decision of the immigration judge. *Martinez v. Clark*, 2020 U.S. Dist. LEXIS  
20 234689, 2020 WL 7343020 (W.D. Wash. 2020). Mr. Martinez then appealed to the Ninth  
21 Circuit Court of Appeals. On June 15, 2022, the Ninth Circuit issued a decision holding that the  
22 district court had no jurisdiction to review the bond decision of the immigration court. *Martinez  
v. Clark*, 36 F.4th 1219 (9th Cir. 2022). After a petition for rehearing en banc was denied, 68  
F.4th 1195, Mr. Martinez appealed to the Supreme Court which granted certiorari, reversed the  
Ninth Circuit's decision, and remanded for reconsideration in light of *Wilkinson v. Garland*, 602  
U.S. 209 (2014). *Martinez v. Clark*, 144 S.Ct. 1339 (2024). On December 27, 2024, the Ninth  
Circuit issued a decision holding that, in light of *Wilkinson*, the district court does have  
jurisdiction to review bond decisions made by an immigration judge, and should review the  
decision for abuse of discretion. *Martinez v. Clark*, 124 F.4th 775 (9th Cir. 2024).

1 Wash. 6/5/2025). On July 7, 2025, this Court adopted the R&R in part, granted Mr. Martinez'  
2 due process claim, and ordered that Mr. Martinez be provided with a bond hearing within 60  
3 days at which the Government bears the burden of proving by clear and convincing evidence that  
4 he continues to pose a risk of flight or a danger to the community. *Martinez v. Alfonso-Royals*,  
5 2025 U.S. Dist. LEXIS 128436, 2025 WL 1866085 (W.D. Wash. July 7, 2025).

6 On August 4, 2025 a bond hearing was held before the immigration judge at the Tacoma  
7 Northwest Detention Facility. The only evidence submitted by DHS to meet the Government's  
8 burden of proof was the following: (1) Forms I-213 (Record of Deportable Alien) (dated April  
9 26, 2018 and November 7, 2017); (2) Mr. Martinez' conviction records (relating to conviction  
10 for conspiracy to deliver cocaine, October 10, 2013); (3) Custody Order of the Immigration  
11 Judge dated October 30, 2018; and (4) Decision of the Immigration Judge dated November 15,  
12 2024. Exhibit A, attached hereto. The Government failed to submit any evidence to establish  
13 that Mr. Martinez is currently a danger to the community or a flight risk.

14 At the bond hearing on August 4, 2025, Mr. Martinez submitted credible, unrebutted  
15 letters of support establishing that the Government has not met its burden of proving by clear and  
16 convincing evidence that he is a danger to the community or a flight risk. Exhibit B. The  
17 Immigration Judge failed to take this evidence into account and instead relied on the only  
18 relevant evidence DHS submitted – the fact of the October 2013 conviction – to conclude that  
19 the Government met its burden of proof. IJ Decision, attached as Exhibit C.

1 At the bond hearing on August 4, 2025, Mr. Martinez attempted to present testimony  
2 showing that the Government's evidence is not clear and convincing evidence of danger to the  
3 community or flight risk. The Immigration Judge refused to allow Mr. Martinez' witnesses to  
4 testify. The Immigration Judge aggressively questioned Elizabeth Lindley, one of Mr. Martinez'  
5 witnesses, while she was in the court gallery; he did not allow Ms. Lindley to testify on the  
6 witness stand. The hearing before the Immigration Judge was not a fundamentally fair  
7 proceeding. The Immigration Judge was hostile, took on the role of a prosecuting attorney, and  
8 refused to consider the evidence that Mr. Martinez wanted to submit. See Declarations attached  
9 as Exhibits E-H.

10 The Respondents and the Immigration Judge failed to comply with this Court's July 7  
11 Order. Because the Government did not provide clear and convincing evidence that Mr.  
12 Martinez is a danger to the community or a flight risk, his continued detention violates due  
13 process. Every passing day of his continued detention further violates his constitutional rights,  
14 making clear that immediate, court-ordered release is appropriate.

## 15 LEGAL ARGUMENT

### 16 I. Request for Hearing

17 This Court has the authority to grant a writ of habeas corpus when the petitioner is held in  
18 custody in violation of the Constitution. That is the situation here. This Court determined, on  
19 July 7, 2025, that if there is no clear and convincing evidence that Mr. Martinez is a danger to the  
20 community or a flight risk, then his continued detention violates Due Process. *Martinez v.*

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1 *Alfonso-Royals*, 2025 U.S. Dist. LEXIS 128436, 2025 WL 1866085 (W.D. Wash. July 7, 2025).

2 On August 4, 2025, the Respondents held a bond hearing before an immigration judge at the  
3 Tacoma Detention Facility. The only relevant evidence DHS submitted was evidence of Mr.  
4 Martinez' prior criminal record from 2013, over ten years ago. The Government provided no  
5 evidence whatsoever to establish that Mr. Martinez is currently a danger to the community.  
6 Moreover, the immigration judge failed to consider evidence that Mr. Martinez submitted  
7 concerning his current good character, refused to allow Mr. Martinez's witnesses to testify, and  
8 acted in a rude and hostile manner to Elizabeth Lindley, one of the persons who had come to  
9 testify on behalf of Mr. Martinez. *See* Exhibits E-H, attached hereto. The bond hearing was not  
10 fundamentally fair and constitutes a violation of Due Process. Under these circumstances, the  
11 continued detention of Mr. Martinez violates Due Process. He should be released from detention  
12 immediately.

13 The Supreme Court has consistently emphasized the importance of the writ of habeas  
14 corpus in protecting against unconstitutional detention. *Johnson v. Avery*, 393 U.S. 483, 485  
15 (1969). *See also Boumediene v. Bush*, 553 U.S. 723, 779 (2008) (habeas corpus "entitles [a]  
16 prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to the  
17 erroneous application or interpretation of relevant law") (cleaned up). The writ should receive  
18 "special, preferential consideration to insure expeditious hearing and determination." *Van*  
19 *Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954). The statute, 28 U.S.C. §2243,  
20 provides that when a habeas petition has been filed, the court shall "forthwith" award the writ or

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1 issue an order to show cause why the writ should not be granted. The return is typically due  
2 within three days, but in any event not more than 20 days. Upon return, the court should  
3 schedule a hearing within not more than five days, unless there is good cause for additional time.  
4 Further, unless there are only issues of law to be resolved, the body of the prisoner is to be  
5 produced at the hearing. The court is authorized to make a de novo determination of whether the  
6 prisoner should be released: “The court shall summarily hear and determine the facts, and  
7 dispose of the matter as law and justice require.” 28 U.S.C. §2243. Although there is some  
8 flexibility as to the timing, the statute clearly contemplates that where a petitioner’s detention is  
9 unconstitutional, the court can and should hear the claim promptly and – based on its own  
10 “independent determination” of the facts – grant release. *See United States v. Motamedi*, 767  
11 F.2d 1403, 1405 (9th Cir. 1985) (“[i]n light of the important constitutional dimensions involved”  
12 the court has “a nondelegable responsibility to make an independent determination of the merits  
13 of the [release] application,” quoting *Truong Dinh Hung v. United States*, 439 U.S. 1326, 1328  
14 (1978) (Brennan, J., in chambers)). As the Ninth Circuit stated, the writ of habeas corpus is  
15 intended to be a “swift and imperative remedy in all cases of illegal restraint.” *Hoeun Yong v.*  
16 *INS*, 208 F.3d 1116, 1120 (9th Cir. 2000) (emphasis added) citing *Fay v. Noia*, 372 U.S. 391,  
17 400 (1963). Courts have statutory and inherent power to grant release to habeas petitioners.  
18 *Ozturk v. Trump*, 2025 U.S. Dist. LEXIS 74496, 2025 WL 1145250, at \*15 (D. Vt. 2025) (citing  
19 *Ostrer v. United States*, 584 F.2d 594, 596 n.1 (2d Cir. 1978)).

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1 Javier Martinez requests, pursuant to 28 U.S.C. §2243, that this Court schedule a prompt  
2 hearing and determine for itself the relevant facts: there is no clear and convincing evidence that  
3 Mr. Martinez is a danger to the community or a flight risk; the continued detention of Mr.  
4 Martinez violates the Constitution; and he should be released immediately. *See Mapp v. Reno*,  
5 241 F.3d 221, 223 (2d Cir. 2001) (“federal courts have the same inherent authority to admit  
6 habeas petitioners to bail in the immigration context as they do in criminal habeas cases”).

## 7 **II. Motion for Temporary Restraining Order**

8 Mr. Martinez recognizes that the procedures under §2243 are flexible and the court has  
9 discretion in scheduling times for resolution of the petition. *See, e.g., Clutchette v. Rushen*, 770  
10 F.2d 1469, 1474 (9th Cir. 1985) (recognizing that the district court possesses “inherent power” to  
11 extend the time for filing a return); *Goldberg v. Tracy*, 247 F.R.D. 360, 392 (E.D.N.Y. 2008)  
12 (“Obeying the explicit directives of section 2243 is probably not possible under present calendar  
13 conditions in federal courts.”). Thus, in the alternative, if the Court decides not to schedule a  
14 prompt hearing pursuant to §2243, Mr. Martinez requests the Court to issue a temporary  
15 restraining order allowing him to remain free of custody while these proceedings are pending.  
16 Similarly, in 2013 the Court allowed Mr. Martinez to remain free on personal recognizance while  
17 the underlying criminal proceedings were pending against him; while free on personal  
18 recognizance, Mr. Martinez remained in perfect compliance with all release requirements.

### 19 **A. Standard for Temporary Restraining Order**

1 The analysis for a TRO and for a preliminary injunction is “substantially identical.”  
2 *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A  
3 petitioner seeking a preliminary injunction or a temporary restraining order must establish the  
4 following elements: (1) the petitioner is likely to succeed on the merits; (2) he is likely to suffer  
5 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in the  
6 petitioner’s favor; and (4) a restraining order is in the public interest. *Winter v. Natural Res. Def.*  
7 *Council, Inc.*, 555 U.S. 7, 20 (2008). In the Ninth Circuit the courts use a “sliding scale” test:  
8 where there are “serious questions going to the merits and a balance of hardships that tips sharply  
9 towards the plaintiff” a temporary restraining order can be granted “so long as the plaintiff also  
10 shows that there is a likelihood of irreparable injury and that the injunction is in the public  
11 interest.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). *Accord*  
12 *Fraihat v. USCIS*, 16 F.4th 613, 635 (9th Cir. 2021); *Friends of the Wild Swan v. Weber*, 767  
13 F.3d 936, 942 (9th Cir. 2014). Under this standard, a temporary restraining order should be  
14 issued requiring the Respondents to release Mr. Martinez immediately.

## 15 **B. Likelihood of Success on the Merits**

### 16 1. Jurisdiction.

17 As an initial matter, Petitioner’s claims are reviewable in habeas proceedings. *See* 28  
18 U.S.C. §2241(c) (writ of habeas corpus extends to persons who are detained in violation of the  
19 Constitution or laws or treaties of the United States); *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006  
(2025) (an individual subject to detention and removal is entitled to judicial review in habeas as

1 to “questions of interpretation and constitutionality”). *See also Trinidad y Garcia v. Thomas*, 683  
2 F.3d 952, 956 (9th Cir. 2012) (en banc) (28 U.S.C. § 2241 “makes the writ of habeas corpus  
3 available to all persons ‘in custody in violation of the Constitution or laws or treaties of the  
4 United States’”).

5 Petitioner’s claim that continued custody violates due process is not precluded by 8  
6 U.S.C. §1226(e). *Singh v. Holder*, 638 F.3d 1196, 1202 (9th Cir. 2011) (“claims that the  
7 discretionary [bond] process itself was constitutionally flawed are cognizable in federal court on  
8 habeas because they fit comfortably within the scope of §2241”). *See also Martinez v. Clark*,  
9 124 F.4th 775, 779 (9th Cir. 2024) (“the determination whether an alien is ‘dangerous’ for  
10 immigration-detention purposes is a mixed question of law and fact and is reviewable as a  
11 ‘question of law’”). In addition, this Court has jurisdiction to review the agency’s decision to  
12 determine whether it has complied with its prior order. *Leonardo v. Crawford*, 646 F.3d 1157,  
13 1161 (9th Cir. 2011).

## 14 2. Merits.

15 This Court ordered a bond hearing to be held to determine whether there is clear and  
16 convincing evidence that Mr. Martinez is currently a danger to the community or a flight risk.  
17 *Martinez v. Alfonso-Royals*, 2025 U.S. Dist. LEXIS 128436, 2025 WL 1866085 (W.D. Wash.  
18 July 7, 2025). The bond hearing that was held on August 4 was not such a hearing. The  
19 Government offered no evidence showing that Mr. Martinez is currently a danger to the  
20 community or a flight risk. The immigration judge was hostile, did not allow witnesses to

1 testify, and took on the role of a prosecuting attorney. At most, the evidence submitted might  
2 support a claim that Mr. Martinez was a danger to the community or a flight risk in the past. But  
3 there is no evidence showing that Mr. Martinez is currently a danger to the community or a flight  
4 risk. In short, Mr. Martinez did not receive a bond hearing that complies with this Court's July 7  
5 Order and the Government has not met its burden of proof.

6 (a) The bond hearing was not fundamentally fair and violated Due Process.

7 The only relevant evidence the Government submitted at the bond hearing was stale –  
8 evidence of Mr. Martinez's conviction in 2013. Mr. Martinez attempted to submit evidence in  
9 response regarding his current situation, but the immigration judge would have none of that. He  
10 took on the role of a prosecuting attorney, did not allow witnesses to testify, and acted in a rude  
11 and hostile manner. *See* Exhibits E-H, attached hereto.

12 The immigration judge did not allow Mr. Martinez' witnesses to testify as to his current  
13 rehabilitation. Exhibits E-H. The IJ's refusal to allow witnesses to testify violated due process.  
14 *See, e.g., Zolotukhin v. Gonzales*, 417 F.3d 1073, 1075–75 (9th Cir. 2005) (IJ violated due  
15 process by refusing to allow petitioner's mother to corroborate factual claims); *Colmenar v. INS*,  
16 210 F.3d 967, 972–73 (9th Cir. 2000) (“Better that we hear these claims out fully and fairly and  
17 then make an informed judgment on the merits. This is consistent with our role as judges, and the  
18 values of our Constitution demand no less”). *See also Tun v. Gonzales*, 485 F.3d 1014, 1025  
19 (8th Cir. 2007) (“[f]or a removal hearing to be fair, the arbiter presiding over the hearing must be  
20 neutral and the immigrant must be given the opportunity to fairly present evidence, offer

1 arguments, and develop the record”); *Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 539–40 (7th  
2 Cir. 2005) (IJ violated due process by barring testimony of expert witnesses).

3 At one point in the hearing, the IJ questioned Elizabeth Lindley, one of the witnesses who  
4 wanted to offer testimony in support of Mr. Martinez. Ms. Lindley describes the exchange:

5 After some exchange with Javier’s attorney, the Judge asked me several questions. I was  
6 not able to testify in the usual manner from a witness stand but had to speak from the  
7 court gallery. It was awkward and hard to communicate, as I was standing in the back  
8 part of the courtroom. The judge appeared entirely impatient and non-interested in what I  
9 was trying to explain. ...

10 The immigration judge also asked me what I meant when I said that Javier does not have  
11 a “criminal mind,” and asked me, in what was a very sarcastic tone, to cite the  
12 appropriate entry in the Diagnostic and Statistical Manual of Mental Disorders (DSM). I  
13 have not worked as a psychotherapist since 1993 and do not carry that sort of information  
14 in my mind. As far as I know, there is no entry in the DSM for “criminal mind.” I was  
15 using the term “criminal mind” as it would be used in ordinary language, referring to a  
16 person who seeks to meet life necessities and wants through criminal activity. It was the  
17 immigration judge’s particularly sarcastic and rude comments that made me feel that he  
18 was basically hostile and trying to ridicule me.

19 Declaration of Elizabeth Lindley, Exhibit E. Elizabeth King describes the IJ’s conduct as  
20 follows:

21 The judge then began to verbally belittle Ms. Lindley. It sounded to me like he was  
22 almost mocking Ms. Lindley, asking who was she to evaluate his mental health and what  
23 qualified her? As Ms. Lindley tried to share her professional background, Judge Odell  
24 simply cut her off and ignored her. It was incredibly unprofessional behavior.

25 Declaration of Elizabeth King, Exhibit F. *See also* Declaration of Sara Cooper, Exhibit H (“it  
26 appeared that the presiding immigration judge at the bond hearing had formed a decision prior to  
27 the proceedings”).

1 The conduct of the IJ at the hearing violated due process. *See, e.g., Lopez-Umanzor v.*  
2 *Gonzales*, 405 F.3d 1049, 1054–55 (9th Cir. 2005) (reversing where IJ “improperly impugned  
3 petitioner’s credibility and prejudged the utility of expert testimony,” and noting that “a due  
4 process violation occurs when an IJ prejudges a claim and fails to behave as a neutral fact-finder  
5 interested in hearing the petitioner’s evidence”); *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir  
6 2000) (the IJ violated due process when he “behaved not as a neutral fact-finder interested in  
7 hearing the petitioner’s evidence, but as a partisan adjudicator seeking to intimidate [the  
8 petitioner] and his counsel”). *See also Abulashvili v. Att’y Gen.*, 663 F.3d 197, 207 (3d Cir.  
9 2011) (“The Due Process Clause cannot tolerate a situation where a supposedly neutral fact  
10 finder interjects herself into the proceedings to the extent of assuming the role of opposing  
11 counsel and taking over cross-examination for the government.”).

12 Finally, the IJ failed to provide any explanation for his decision. At the end of the  
13 hearing, he stated simply that bond was denied. That decision is reflected in the written Order.  
14 *See Exhibit C.* The IJ’s decision is unacceptable because there is no explanation of why he  
15 rejected Mr. Martinez’s evidence, why he concluded that Mr. Martinez is a danger to the  
16 community or a flight risk, and why conditional release was denied. As the Ninth Circuit has  
17 explained:

18 While the BIA is not required to discuss each piece of evidence submitted, where there is  
19 any indication that the BIA did not consider all of the evidence before it, a catchall phrase  
20 does not suffice, and the decision cannot stand. Such indications include ... failing to  
21 mention highly probative or potentially dispositive evidence.

1 *Pirir-Boc v. Holder*, 750 F.3d 1077, 1085–86 (9th Cir. 2014) (cleaned up). Similarly, the Fourth  
2 Circuit has stated in finding that the IJ and the BIA “abdicated their responsibility to address  
3 Petitioner’s evidence”:

4 [W]hen disregarding ‘credible, significant, and un rebutted evidence,’ agency adjudicators  
5 must offer ‘specific, cogent reasons’ for doing so. ... Critically, Petitioner was ‘entitled to  
6 know that agency adjudicators reviewed all [his] evidence, understood it, and had a  
7 cogent, articulable basis for its determination that [his] evidence was insufficient.’

8 *Portillo-Flores v. Garland*, 3 F.4th 615, 636 (4th Cir. 2021) (en banc).

9 (b) There is no clear and convincing evidence that Mr. Martinez is a danger to the  
10 community or a flight risk.

11 This court has required the Government to meet its burden of proof by “clear and  
12 convincing” evidence. According to the Supreme Court, one purpose of the clear and convincing  
13 evidence standard is “to impress the factfinder with the importance of the decision and thereby  
14 perhaps to reduce the chances that inappropriate commitments will be ordered.” *Addington v.*  
15 *Texas*, 441 U.S. 418, 427 (1979). *See also id.* at 425 (“[A]dopting a standard of proof is more  
16 than an empty semantic exercise. In cases involving individual rights, whether criminal or civil,  
17 [t]he standard of proof [at a minimum] reflects the value society places on individual liberty.”).

18 The Ninth Circuit has held that when a district court reviews an IJ’s bond decision, it  
19 should do so under an “abuse of discretion” standard of review. *Martinez v. Clark*, 124 F.4th at  
20 779. Abuse of discretion review is not toothless. An abuse of discretion occurs where the  
21 agency has failed to properly consider the evidence offered. *See, e.g., American Paper Institute,*  
22 *Inc. v. American Elec. Power Service Corp.*, 461 U. S. 402, 413 (1983) (to decide whether action

1 was abuse of discretion, the court must “determine whether the [agency] adequately considered  
2 the factors relevant” to the question); *Highmark Inc. v. Allcare Health Management System, Inc.*,  
3 572 U. S. 559, 564, n. 2, (2014) (“The abuse-of-discretion standard does not preclude an  
4 appellate court’s correction of a ... clearly erroneous assessment of the evidence”).

5 Here, this Court reviews the agency’s decision in the context of a person who has been  
6 deprived of freedom to live and move about in society, which “lies at the heart of the liberty that  
7 [the Due Process Clause] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). *See also*  
8 *Singh v. Holder*, 638 F.3d 1196, 1203-04 (9th Cir. 2011) (“it is improper to ask the individual to  
9 share equally with society the risk of error when the possible injury to the individual –  
10 deprivation of liberty – is so significant”). Thus, the court must provide a “careful review” and  
11 an “independent examination” of the reasons given for detention orders in order to make sure  
12 that such orders are consistent with the detainee’s constitutional rights. As then Circuit Judge  
13 Kennedy explained:

14 In a release determination, ... we must ensure not only that the factual findings support  
15 the conclusion reached, but also that the person’s constitutional and statutory rights have  
16 been respected. ... Accordingly, we may make an independent examination of the facts,  
17 the findings, and the record to determine whether the pretrial detention order is consistent  
18 with those constitutional and statutory rights. ... The inquiry transcends the facts  
19 presented and requires both the consideration of legal principles and the exercise of  
20 sound judgment about the values which underly those principles.

17 *United States v. Motamedi*, 767 F.2d 1403, 1405 (9th Cir. 1985). Although the *Motamedi*  
18 decision was made in the context of pre-trial detention under the Bail Reform Act, those same  
19 principles are operative in the context of immigration detention. In both cases, it is the

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1 detainee’s fundamental liberty interests that are at stake. *See, e.g., Obregon v. Sessions*, 2017  
2 U.S. Dist. LEXIS 60552, \*19-20 (N.D. Cal.2017) (“Decades of precedent in the context of  
3 criminal bond hearings offer IJ’s the appropriate guidance in assessing whether the government  
4 has met its burden of proving dangerousness by ‘clear and convincing evidence,’ limiting  
5 detention only to ‘specially dangerous individuals’ as the Court described in *Zadvydas*.”).

6 Given the evidence submitted to the immigration court at the August 4 hearing, there is  
7 no way to justify the IJ’s conclusion that Mr. Martinez is a danger to the community and/or a  
8 flight risk. The IJ’s decision constitutes an abuse of discretion.

9 Although a noncitizen’s past criminal record is relevant to a bond assessment, the fact of  
10 a criminal conviction by itself is not “sufficient to justify denial of bond on the basis of  
11 dangerousness.” *Singh v. Holder*, 638 F.3d 1196, 1206 (9th Cir. 2011) (“[A] conviction could  
12 have occurred years ago, and the [noncitizen] could well have led an entirely law-abiding life  
13 since then. In such cases, denial of bond on the basis of criminal history alone may not be  
14 warranted.”). Thus, “the recency and severity of the offenses must be considered,” *id.* (emphasis  
15 added). *See also Perez v. Wolf*, 445 F. Supp. 3d 275, 287 (N.D. Cal. 2020) (“when the offense  
16 occurred, and what the immigrant has done since the offense are ... factors the IJ must  
17 consider”) (emphasis added); *Obregon v. Sessions*, 2017 U.S. Dist. LEXIS 60552, \*21, 2017 WL  
18 1407889, at \*7 (N.D. Cal. Apr. 20, 2017) (“courts must consider the remoteness of the [offense]  
and intervening events that might undermine a finding of dangerousness”) (emphasis added).

19 Accordingly, courts have found that the remoteness of an offense – even a serious offense –

1 undermines its probative value as to potential danger. *See, e.g., Calderon-Rodriguez v. Wilcox*,  
2 374 F. Supp. 3d 1024, 1036 (W.D. Wash. 2019) (ICE erred as a matter of law by failing to  
3 consider petitioner’s danger and flight risk on a current basis; evidence of “serious” DUI  
4 convictions not sufficient to meet the government’s burden of proof because the convictions  
5 occurred seven years prior and Petitioner was sober since); *Judulang v. Chertoff*, 562 F. Supp. 2d  
6 1119, 1126–27 (S.D. Cal. 2008) (evidence of 20-year-old conviction for manslaughter and seven  
7 year-old conviction for DUI was not sufficient, as a matter of law, to establish dangerousness);  
8 *Mau v. Chertoff*, 562 F. Supp. 2d 1107, 1116 (S.D. Cal. 2008) (government did not establish  
9 dangerousness, as a matter of law, by pointing only to past DUI convictions that were four to six  
10 years old).

11 In this case, DHS did not provide any evidence that Mr. Martinez is currently a danger to  
12 the community. There is no evidence that Mr. Martinez has been subject to discipline while in  
13 either criminal or civil custody. That fact erodes any plausibility there might have been for  
14 supporting a “clear and convincing evidence” finding. *See, e.g., Aguirre-Urbina v. Wilcox*, 2019  
15 U.S. Dist. LEXIS 84092, \*4, 2019 WL 2161644 (W.D. Wash. 2019) (finding “lack of  
16 disciplinary issues during the time [the noncitizen] has spent in custody at the Northwest  
17 Detention Center” relevant to a determination that dangerousness was not established by clear  
18 and convincing evidence); *Judulang*, 562 F. Supp. 2d at 1127 (holding that government’s failure  
19 to present evidence of disciplinary infractions or behavioral episodes counseled against a finding

1 of dangerousness); *Kay v. Reno*, 94 F. Supp. 2d 546, 552 (M.D. Pa. 2000) (noting lack of  
2 disciplinary action while in immigration custody was relevant to the dangerousness analysis).

3 Mr. Martinez presented the following documentary evidence at the bond hearing:

4 Mr. Martinez is genuinely rehabilitated. He takes his responsibility seriously, respects  
5 authority, and makes efforts to mentor and guide others at the detention center who may  
6 be less mature or centered. He is sincerely committed to helping others avoid the  
7 mistakes he made. *See* Letters of Support from Liz Strongman, Exhibit B, p. 14.

8 Over the past five years, Mr. Martinez's life at the detention center has influenced others.  
9 Other detainees have been encouraged by how he has dealt with his troubles. He has  
10 been called a 'gentle leader' among detainees. *See* Letter of Support from Kangho Lee,  
11 Exhibit B, p. 13.

12 Mr. Martinez has broad and exceptional support in his support community. If he is  
13 released, this community stands ready to support him. His brother will offer a place to  
14 live; Mr. Martinez has an assured job lined up; his support community has identified a  
15 drug treatment program that Mr. Martinez can begin to attend immediately upon his  
16 release; and he has a strong relationship with his daughter and grandson. Exhibit B, pp.  
17 2-32.

18 Mr. Martinez has recently become a grandfather and is motivated to remain clean and  
19 sober so that he can help to take care of his daughter and grandson; he has promised to  
20 his family and the people in his community that he will remain clean and sober and never  
21 again be involved in unlawful activity. Exhibit B, p. 1.

22 This evidence is more than sufficient to establish that reliance on a more than 12-year old  
criminal offense does not provide clear and convincing evidence of danger to the community.<sup>5</sup>

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<sup>5</sup> Also relevant is the fact that in February 2013 and again in October 2013 this Court determined Mr. Martinez is not a danger to the community or a flight risk and allowed him free on personal recognizance while criminal proceedings were pending. Exhibits I and J. Mr. Martinez proved by his conduct that assessment was correct: he remained clean and sober

1 *See Ramos v. Sessions*, 2018 U.S. Dist. LEXIS 25345, \*14-15 (N.D. Ca. 2018) (petitioner  
2 demonstrated “changed circumstances in the form of meaningful rehabilitation” as evidenced by  
3 letters from community members, her own testimony about her dedication to sobriety, and her  
4 commitment to remaining in treatment); *Obregon*, 2017 U.S. Dist. LEXIS 60552, 2017 WL  
5 1407889, at \*8 (“It violates due process to keep someone in immigration detention for more than  
6 a year on the basis of dangerousness where the overriding reason is that a non-violent crime was  
7 committed as a result of that person’s addiction and the individual has a viable plan for  
8 rehabilitation and compliance with pertinent conditions of release.”).

9 The evidence before the immigration judge at the August 4 hearing does not establish  
10 flight risk by clear and convincing evidence. The only possibly relevant evidence that the  
11 Government offered to show that Mr. Martinez is a flight risk was the order of removal issued by  
12 the immigration judge. However, the Ninth Circuit has held that although a final order of  
13 removal an order “is a relevant factor in the calculus, it alone does not constitute clear and  
14 convincing evidence that [the petitioner] presented a flight risk justifying denial of bond.” *Singh*,  
15 638 F.3d at 1205 (emphasis added). Here, the IJ failed to address the voluminous evidence that  
16 Mr. Martinez put forward to show that he has a fixed address if he is released; he has a job  
17 available for him; he a strong relationship with his daughter and grandson; he has a release plan  
18 and has arranged for enrollment in a drug treatment program; and has strong network of support  
19 during the entire time he was released; he committed no unlawful actions; and he self-reported  
20 to prison when he was ordered to begin serving his sentence.

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1 to ensure his compliance with all requirements. Finally, DHS never offered any evidence to  
2 suggest that alternatives to detention (ATD), such as regular check-ins, would fail to abate any  
3 flight risk concerns. Nor could they, since their own ATD programs have extremely high rates of  
4 success. *See, e.g., Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017). Respondents’  
5 failure to contest Mr. Martinez’ flight risk – especially when coupled with the evidence  
6 affirmatively submitted by Mr. Martinez – demonstrates that release is appropriate. *See, e.g.,*  
7 *Sales v. Johnson*, 323 F. Supp. 3d 1131, 1141 (N.D. Cal. 2017) (ordering release of immigration  
8 detainee after bond hearing where government did not “argue that Petitioner was a flight risk” or  
9 “present any evidence to that effect,” especially in light of other evidence favorable to the  
10 petitioner, including his “family ties” to the United States); *Castellanos-Luna v. Pompeo*, 2019  
11 U.S. Dist. LEXIS 115592, \*8, 2019 WL 3027645 (W.D. Wash. 2019) (no clear and convincing  
12 evidence of flight risk because the IJ provides “no explanation for why she has ‘no confidence’  
13 in [petitioner’s] ability to comply with release conditions such as electronic monitoring,  
14 community supervision, or other conditions”).

15 For the foregoing reasons, Mr. Martinez is likely to succeed on his claim that the  
16 Government has not met its burden of proving by clear and convincing evidence that he is a  
17 danger to the community or a flight risk, and thus his continued detention constitutes a violation  
18 of Due Process.

19 3. Exhaustion of administrative remedies

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1 The Ninth Circuit has stated that if a petitioner does not exhaust administrative remedies  
2 by filing an appeal to the Board of Immigration Appeals, the district court “ordinarily” should  
3 either dismiss the petition without prejudice or stay the proceedings until the administrative  
4 appeal has been exhausted. *Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011).  
5 However, the court noted that the exhaustion requirement does not apply when – as here – the  
6 petitioner argues that the agency has failed to comply with the court’s prior order. *Id.* at 1161  
7 (the petitioner “is correct that the district court had authority to review compliance with its  
8 earlier order conditionally granting habeas relief”). *See also Gentry v. Deuth*, 456 F.3d 687, 692  
9 (6th Cir. 2006) (a federal district court retains jurisdiction to determine whether a party has  
10 complied with the terms of a conditional order in a habeas case); *Phifer v. Warden, U.S.*  
11 *Penitentiary*, 53 F.3d 859, 865 (7th Cir. 1995) (where a habeas petitioner claims that the agency  
12 has failed to comply with a conditional order, “jurisdiction exists for the purpose of determining  
13 whether the [government] acted in accordance with the court’s mandate”). *See also Hamilton v.*  
14 *Nakai*, 453 F.2d 152, 157 (9th Cir. 1972) (“The equitable jurisdiction of a federal court extends  
15 to supplemental or ancillary bills brought for the purpose of effectuating a decree of the same  
16 court.”).<sup>6</sup> Because Mr. Martinez claims that the Respondents and the Immigration Judge have

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17 <sup>6</sup> The *Leonardo* court also noted that the exhaustion requirement is prudential. 646 F.3d at  
18 1160. A court may waive the exhaustion requirement if “administrative remedies are  
19 inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture,  
20 irreparable injury will result, or the administrative proceedings would be void.” *Hernandez v.*  
*Sessions*, 872 F.3d 976, 988 (9th Cir. 2017). Those considerations counsel in favor of waiving

1 failed to comply with the court’s order, he should not be required to exhaust administrative  
2 remedies.

3 **C. Irreparable Injury**

4 There is no doubt about the possibility of irreparable harm. Continued detention in  
5 violation of Due Process constitutes irreparable harm. “It is well established that the deprivation  
6 of constitutional rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695  
7 F.3d 990, 1002 (9th Cir. 2012). Furthermore, there are “irreparable harms imposed on anyone  
8 subject to immigration detention, including the economic burdens imposed on detainees and their  
9 families as a result of detention.” *Diaz v. Kaiser*, 2025 U.S. Dist. LEXIS 113566, \*8, 2025 WL  
10 1676854 (N.D. Cal. 2025) (quoting *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017)).  
11 *See also Warsoldier v. Woodford*, 418 F.3d 989, 1001–02 (9th Cir. 2005) (quoting Wright,  
12 Miller, & Kane, *Federal Practice and Procedure*, § 2948.1 (2d ed. 2004)) (“When an alleged  
13 deprivation of a constitutional right is involved, most courts hold that no further showing of  
14 irreparable injury is necessary.”).

15 **D. Balance of Hardships and Public Interest**

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17  
18 exhaustion in this case. An appeal to the Board of Immigration Appeals would be futile for  
19 purposes of remedying current unconstitutional detention. Each day Mr. Martinez is held in  
20 detention constitutes another irreparable injury. An appeal to the BIA could last six months or  
21 longer, during which time Mr. Martinez would suffer further unconstitutional detention,  
22 constituting irreparable injury.

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1 The remaining two factors to be considered – balance of harms and public interest –  
2 merge when the government is the party opposing a motion for preliminary injunction. *Nken v.*  
3 *Holder*, 556 U.S. 418, 435 (2009). Without granting Mr. Martinez the requested injunctive  
4 relief, he faces the continued loss of his liberty which, as argued above, is likely unconstitutional.  
5 “It is always in the public interest to prevent the violation of a party’s constitutional rights.”  
6 *Index Newspapers LLC v. U.S. Marshals Serv.*, 977 F.3d 817, 838 (9th Cir. 2020) (citation  
7 omitted); *Diaz v. Kaiser*, 2025 U.S. Dist. LEXIS 113566, \*8, 2025 WL 1676854 (N.D. Cal.  
8 2025) (“The public has a strong interest in upholding procedural protections against unlawful  
9 detention, and the Ninth Circuit has recognized that the costs to the public of immigration  
10 detention are staggering.”).

11 For the foregoing reasons, this Court should issue an order allowing Mr. Martinez to be  
12 released from detention immediately, as has been done in other cases in which petitioners  
13 showed a likelihood that detention was unconstitutional. *See, e.g., Nadarajah v. Gonzales*, 443  
14 F.3d 1069, 1084 (9th Cir. 2006) (given the “unreasonable length” of petitioner’s detention and  
15 that “continued detention violates federal law,” court ordered immediate release); *Harman Singh*  
16 *v. Andrews*, 2025 U.S. Dist. LEXIS 132500, \*25, 2025 WL 1918679 (E.D. Cal. 2025) (requiring  
17 the government to immediately release petitioner and not re-detain him without demonstrating,  
18 by clear and convincing evidence, that he is a flight risk or danger to the community); *Gunaydin*  
19 *v. Trump*, 2025 U.S. Dist. LEXIS 99237, \*27, 2025 WL 1459154 (D. Minn. 2025) (ordering  
20 immediate release rather than requiring petitioner to wait for a decision from the Board of

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1 Immigration Appeals); *Ramos v. Sessions*, 293 F. Supp. 3d 1021 (N.D. Cal. 2018) (ordering  
2 release “immediately” where government failed to meet its burden of proof); *Judulang v.*  
3 *Chertoff*, 562 F. Supp. 2d 1119, 1127 (S.D. Cal. 2008) (where the evidence “failed, as a matter of  
4 law, to prove flight risk or danger pursuant to the Court’s order,” the court ordered petitioner’s  
5 “release under appropriate conditions of supervision”); *Leslie v. Holder*, 677 F.Supp.2d 627  
6 (E.D. Pa. 2012) (ordering release of detainee where continued detention without bond was found  
7 to be unreasonably long and in violation of Due Process); *Madrane v. Hogan*, 520 F. Supp. 2d  
8 654 (M.D. Pa. 2007) (ordering the petitioner’s immediate release from custody on personal  
9 recognizance because prolonged detention, without a showing of flight risk or danger to the  
10 community, violates due process).

11 CONCLUSION

12 For the foregoing reasons, Mr. Martinez requests that this Court schedule a prompt  
13 hearing pursuant to 28 U.S.C. §2243, at which he will have an opportunity to establish that his  
14 continued detention violates the constitution. Alternatively, Mr. Martinez requests this Court to  
15 issue a temporary restraining order allowing him to remain free from detention while these  
16 habeas proceedings remain pending.  
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Dated this 13th day of August, 2025.

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I certify that this brief contains 7467 words,  
in compliance with the Local Civil Rules.